

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JERMAINE KENYATTA COLEMAN

PLAINTIFF

V.

CIVIL ACTION NO. 2:16-CV-60-KS-MTP

LARON SMITH

DEFENDANT

MEMORANDUM OPINION AND ORDER

For the reasons below, the Court **adopts** the Magistrate Judge's Report and Recommendations [27] and **grants** Defendant's Motion to Dismiss [20]. Plaintiff's claims against Defendant Laron Smith are **dismissed with prejudice**, and this case is **closed**. The Court further finds that this dismissal shall count as a "strike" pursuant to 28 U.S.C. § 1915(g).

Plaintiff asserted a claim for damages pursuant to 42 U.S.C. § 1983 against Defendant Laron Smith. He claims that Smith violated his constitutional rights by providing false testimony in a preliminary hearing. Smith filed a Motion to Dismiss [20], arguing that he enjoyed absolute immunity from liability with respect to Plaintiff's claims. The Magistrate Judge entered a Report and Recommendation [27] that the Court grant Defendant's motion, dismiss Plaintiff's claims against him with prejudice, and count the dismissal as a strike pursuant to 28 U.S.C. § 1915(g). Plaintiff filed his objections [28, 30, 31] to the report and recommendation, but he failed to address the legal basis of the Magistrate Judge's recommendation.

"[A] trial witness has absolute immunity with respect to *any* claim based on the witness' testimony." *Moffett v. Bryant*, 751 F.3d 323, 325 (5th Cir. 2014). This rule

applies to testimony by law enforcement officers, *Castellano v. Fragozo*, 352 F.3d 939, 958 (5th Cir. 2003), and it applies to testimony provided at preliminary hearings. *Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994). Therefore, Plaintiff has stated no claim against Defendant Smith for which this Court can grant relief, and Plaintiff's claim against Smith is frivolous.

Accordingly, the Court **adopts** the Magistrate Judge's Report and Recommendations [27], **grants** Defendant's Motion to Dismiss [20], and **dismisses** Plaintiff's claims against Defendant Laron Smith **with prejudice**. This case is hereby **closed**, and this dismissal shall count as a "strike" pursuant to 28 U.S.C. § 1915(g).

SO ORDERED AND ADJUDGED this 25th day of October, 2016.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE